IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
::::

JUDGMENT

Memood Hussain & Anr.
vs
Smt. Jenab Bano

S.B. CIVIL SECOND APPEAL NO.282/2007 AGAINT THE JUDGMENT AND DECREE DATED 9.3.2007 PASSED BY SHRI RAM CHANDRA, RHJS, ADDL. DISTRICT JUDGE NO.3, UDAIPUR IN CIVIL APPEAL NO.9/2004 DISMISSING FIRST APPEAL OF THE APPELALNT AND AFFIRMING THE JUDGMENT AND DECREE PASSED BY THE CIVIL JUST (JD) UDAIPUR CITY (NORTH) ON 25.4.2003 IN CIVIL ORIGINAL SUIT NO.56/1997.

Date of order : 10.12.2007

PRESENT
HON'BLE MR. PRAKASH TATIA, J.

Mr. Shreedhar Purohit, for the appellants.
Mr. Vivek Shrimali, for the respondents.

<><><>

BY THE COURT :

Heard learned counsel for the parties.

The appellants-tenants have challenged the concurrent finding of fact recorded by the two courts below by which both the courts below held that the suit property is required for the bonafide necessity of the plaintiffs to run her son's buisness.

Learned counsel for the appellants vehemently submitted that appellants proved the fact that

plaintiffs had two more shops and the defendants' other shop which was also on rent was in dilapidated condition and the defendants-appellants could not have run their business in that dilapidated condition shop. The appellants also submitted an application under order 41 Rule 27 CPC before the first appellate court and sought permission of appellate court to produce additional evidence to prove the fact that the defendant's other rented shop is in dilapidated condition and further produced photographs of the shop, which is in possession of the plaintiffs. That application was rejected by the first appellate court. According to learned counsel for the appellant when the evidence is relevant and necessary for deciding the appeal then the Court should take liberal view. Learned counsel for the appellant also submitted that though there was issue of partial eviction decided against the appellant, but still if the property is divided, the need of both the parties can be satisfied.

I considered the submissions of learned counsel for the appellant and perused the reasons given by the two courts below. The two courts below fully considered the submissions of appellant in detail with respect of availability of the other shop to the plaintiffs and also considered the evidence given by the defendants-appellants that condition of other

rented shop which according to the plaintiffs was in dilapidated condition. Thereafter, the trial court decreed the suit of the plaintiffs. In appellate court, the plaintiffs sought permission to produce additional evidence on the fact that the plaintiffs have two shops. That was the fact in issue before the trial court itself. There was no reason for appellants to keep any evidence which he could have produced in the trail court and submit before the appellate court that the evidence will be relevant for the purpose of deciding the issue. If this proposition is accepted then any person can withheld all best evidence available with him during the trial and can seek permission of the appellate court to produce evidence, which he deliberately did not produce in the trial court. Such is not the scope of Order 41 Rule 27 CPC. The contention of the appellants that the appellants' other rented shop fell down is also absolutely irrelevant in the facts of this case in view of the submission of learned counsel for the appellants himself as learned counsel for the appellants submitted that appellants took this shop on rent because their other shop was in dilapidated condition.

In view of the above reason as well as in view of the fact that even if the appellants would not have any other shop even then he is to face

consequence of eviction in case of proof of bonafide necessity of the plaintiffs for the premises let out to him. I do not find that any substantial questions of law are involved in this appeal. The question of partial eviction is also based on the evidence. The contention of the learned counsel for the appellant is for re-appreciation of the evidence, which was considered by the two courts below, which is not the scope of Section 100 CPC. In view of the above, the appeal of the appellants deserves to be dismissed.

At this stage, learned counsel for the appellant submitted that reasonable time of two years may be granted to the appellants for vacating the suit premises because of the reason that the appellants have large family and therefore, they have to make other arrangements for their business.

Learned counsel for the respondents submitted that in fact there is no reason for grant of any period to the appellant, however, the first appellate court passed the order 9.3.2007 and 9 months have already passed, therefore, a shorter period may be granted.

In view of the totality of he facts of the case, it is ordered that in case, the appellants furnish a written undertaking before the trial court within a period of three month from today that they shall hand over the vacant possession to the landlord by or before

31.12.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of three months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.1.2009. The appellants shall also deposit the rent month by month by 15th day of each succeeding month of their tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

(PRAKASH TATIA), J.

c.p.goyal/-